



USAID
FROM THE AMERICAN PEOPLE

GEORGIA

Getting Established and Using Exemptions October 2005

This guide provides general information to US organizations on establishing and operating in Georgia as a USAID partner organization. It is not legal advice nor is it designed to be comprehensive. USAID partners are expected to be familiar with the laws and regulations that govern their operations.

I. Registering in Georgia

The 1997 Civil Code of Georgia provides for establishment of two general types of legal entities: commercial organizations, such as limited liability companies and non-commercial organizations, such as unions (associations) and foundations. The difference relates primarily to whether profits are sought. US organizations may establish themselves in Georgia through subsidiaries, branches or representative offices. USAID expects its contractors and grantees to comply with all applicable laws regarding formation and registration so that they may legally operate in Georgia.

Commercial entities are created according to the Law on Entrepreneurs. The application for registration should be submitted to the tax agency according to the domicile of the entity and must contain certain information: organizational legal form, legal address, name of the entity, data on starting and ending date of the economic year, representation authority and full name, date and place of birth, profession and place of residence of each founding partner (if the founder is a legal person, name of the entity and registration data). In addition to the general requirements, different information is necessary for different types of commercial entities (See Article 5, Georgian Law on Entrepreneurs).

An entity does not become a “legal person” until the date of its registration. The tax agency processes the registration within 3 business days upon receipt of a complete application by making an entry into the entrepreneurial registry. If registration is not done within the given period or the applicant is not notified in writing concerning a justified refusal or deficiency, the registration will be deemed effective. The tax agency is required to issue a registration card and taxpayer’s card immediately upon request from the applicant.

Non-commercial entities are also required to register in order to become “juridical persons.” An application signed by all founders and board members as well as the charter of the entity (approved by a notary) is necessary for registration. Unions (associations), foundations as well as branches (representations) of unions and foundations are registered with the Ministry of Justice. In all cases, a decision on registration is to be made within 15 days from the day of filing of an application. If no decision is made within the given period, the registration will be deemed effective. Registration documents must contain the name and domicile of the entity, the object

of its activity, the date the charter was approved, the identity of founders, the identity of board members and any possible restrictions on their authority.

The registration fees for commercial and non-commercial entities are provided in the 2002 Law of Georgia on Registration Fees.

Legal persons must apply to the tax agency to obtain a tax identification number (TIN) within 10 days from the day of registration or the beginning of economic activity. The Tax Department provides a TIN and taxpayer's certificate to each taxpayer and tax agent within 5 days from the day of filing the application, which is used for all taxation purposes including customs duties. A TIN is necessary for a USAID partner to take advantage of the normal tax exemption procedures and to begin withholding of taxes.

II. Procedures for Obtaining VAT and Customs Duties Exemptions

The 1992 Bilateral Agreement between the Governments of the United States and Georgia creates different levels of tax and duty exemptions for USAID partners – US, foreign and local. The table in Section III outlines the most important exemptions. Note that the exemptions apply only to costs incurred under United States Government assistance programs. Thus, an organization working with both USG and private funding must ensure that it does not improperly claim exemptions for privately funded activities and risk prosecution for tax evasion. Also note that the 1992 treaty does *not* exempt USAID partners from registration, accounting, withholding¹ or other requirements not specifically exempted by law.

On May 1, 2004, the Order of the Ministry of Finance on approving the instructions for the implementation of procedures of tax and customs benefits arising during the execution of the US Government assistance programs in the scope of the "Agreement Between the Government of the United States of America and the Government of the Republic of Georgia Regarding Cooperation to Facilitate Humanitarian and Technical Economic Assistance," dated July 31, 1992 and the "Status of Forces Agreement," dated December 10, 2002 established procedures for obtaining tax and customs benefits for implementing US Government assistance programs (See Order # 283 of the Ministry of Finance dated April 23, 2004). The instructions in both English and Georgian are posted on the USAID/Caucasus website.

While the instructions set the procedures for tax and customs duties exemptions, it also provides different levels of exemption for US and non-US entities, implementing USG assistance programs. US and non-US implementers are entitled to VAT and customs duties exemption, whereas only US Government agency, or private US organizations responsible for implementing assistance projects are exempt from other taxes, such as: any income, profit, social, property, excise and any other taxes including general state taxes related to rent, accommodations or transportation.

¹ It should be noted that none of the USAID partners, are exempt from withholding income tax with respect to their Georgian employees.

Furthermore, only US private organizations, which implement assistance projects under the Bilateral Agreement, or any personnel of such organization are exempt from any income tax from Georgian sources, such as profit, social property and any other taxes, including general state taxes related to rent, accommodations or transportation. The above exemption does not extend to the personnel of such organizations who are nationals of Georgia. Also, US private organizations are not exempt from withholding income tax on behalf of their Georgian staff. The import of goods (foodstuff, supplies, equipment, household goods or other items), which are for the personal use of the personnel of a USG or US private organization, **other than Georgian nationals**, are exempt from customs duties.

USG implementers exercise their tax benefits based on a letter issued by the Ministry of Finance. The Ministry issues the letter based on a list or updated lists of implementers provided by the USG on a monthly basis within 15 business days from the day of receiving of such a list or lists. In case of any changes to the list during the interim period, the USG will submit to the Ministry of Finance an updated list or lists of its implementers.

The letter issued by the Ministry will state that, within the assistance program, any purchase of goods (commodities, supplies, equipment), works or services are free of taxes (including VAT), customs duties, including, but not limited to fees and charges on the basis of the Bilateral Agreement. The letter will also provide the name of the implementer, the title of the project and the beginning and end dates of the project or program.

The instructions provide that monetization of goods are exempt from taxes, including VAT and customs duties.

Any request by the Ministry of Finance and tax authorities for additional information or for funding instruments from a partner must be discussed with the US Embassy or respective USG donor organization before approaching the implementer.

The import and export of goods (commodities, foodstuff, medical supplies, equipment, supplies and other goods), also goods or commodities for monetization programs within the scope of the Bilateral Agreement are exempt from customs duties.

For the import of goods customs duties free, at least 10 days prior to importing the goods or commodities, the implementer must submit to the Ministry of Finance and the USG donor agency the following information: the name and address of the implementer, a brief description of the assistance project under which the items are being imported, volume, value and list of items imported and a copy of accompanying documents of the cargo such as invoices, bills of lading and airway transportation documents. Furthermore, for importing goods for humanitarian-technical assistance, the implementer must submit to the Ministry the distribution plan of the goods.

If the goods are imported by the implementer for its own use in connection with the assistance program, the distribution plan as well as other relevant documents must be submitted directly to the Customs Department and indicate that the goods are intended for the implementer's own purposes. Although there were no changes or additions made to the instructions, the Ministry of Finance transferred to the Customs Department the authority to issue letters permitting customs duty free importation of goods intended for personal use. The same documentation is to be submitted to the Customs Department within the same determined dates and according to the same procedure as for import of goods intended for assistance programs.

The Ministry of Finance or Customs Department must notify in writing the implementer whether it approves or disapproves the import under the assistance program within 10 business days from the day of receiving the relevant information. If the Ministry or Customs Department fails to notify the implementer within the 10-day period, the import will be deemed to be approved and the items may be imported free from customs duties. In the case of disapproval, the Ministry must notify the implementer, Customs Department and the US Government donor agency responsible for the assistance program in writing providing the reason(s) for the disapproval.

III. Tax and Customs Duties Exemptions

Description of Tax or Duty	Tax Rate	Exempted for Program-Related Costs
VAT on goods (commodities, supplies, equipment and other goods), works and services rendered in connection with the assistance program	18%	A B C
Excise Tax ²	Fixed amount per unit or calculations based on the certain parameters, e.g. for automobiles - power of engine;	A C
Income Tax	12%	C
Profit Tax ³	20%	A
Social Tax ⁴	20%	A
Customs Duty		A B C
Property Tax ⁵		A C

² See Articles 256 and 258 of the Tax Code of Georgia, December 22, 2004

³ Georgian and foreign organizations are exempt from profit tax on funds received by them in the form of grants, membership fees and donations. See Article 172.b of the Tax Code of Georgia, December 22, 2004

⁴ Georgian and foreign employers (grant recipient organizations) are exempt from the social tax on the remuneration it pays to its employees from granted funds. See Article 270.c of the Tax Code of Georgia, December 22, 2004

A – US government or US private organizations
B – Other organizations (Georgian and non-US)
C – Employees of A who are not Georgian citizens and
who are not ordinarily resident in Georgia

⁵ See Article 273 of the Tax Code of Georgia, December 22, 2004